

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 658 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

STATE OF GUJARAT

Versus

GHANCHI HAJIBHAI GAFURBHAI

Appearance:

MR. KAMAL MEHTA, LD.PUBLIC PROSECUTOR for Petitioner

MR BH MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/08/97

ORAL JUDGEMENT

The Respondent accused came to be acquitted of the offences punishable under section 279, 337, 338 and 427 I.P.C, and under section 3(1), 112, 116 and 89 of the Motor Vehicles Act by the Ld. JMFC, Botad, in Criminal Case No. 146 of 1988, under the orders dated May 29, 1991. The State feels aggrieved with the above said orders of acquittal and hence the present Appeal.

The case of the prosecution appears to be that, the complainant Mansukhlal with his relation Jitubhai was going towards Gadhada from Botad on January 18, 1988 on his Rajdoot motor cycle, and when they had reached near village Nagalpur, the respondent accused had come there from the opposite direction, driving his Bullet motor cycle No GJP-3816. According to the case of the prosecution, the respondent accused was driving the above said vehicle rashly and negligently and so as to endanger human life and that, because of the dash given by the respondent accused by his vehicle to the vehicle of the complainant, he and his relation Jitubhai had fallen down and had sustained grave injuries. The Court below has not accepted the evidence of the prosecution for the purpose of establishing two aspects of the case, namely that the respondent accused was the driver of the Bullet motor cycle and that, secondly, he was driving his vehicle in a rash and negligent manner so as to endanger human life.

Upon the appreciation of the evidence on record, it is apparent that, Ld. JMFC was perfectly justified in coming to the above said conclusion. Complainant Mansukhlal, PW-1, Exhibit-5 has stated that, he was driving his vehicle on the correct side of the road but that the Bullet being driven by the respondent accused had come there from the opposite direction and that, the said vehicle was being driven at a speed, and later on the Bullet motor cycle had given a dash to his vehicle on the right side. The complainant has made it abundantly clear during the cross examination that, the respondent accused belonged to his own village and though, he had filed the F I R, later on at the hospital he had never disclosed the name of the respondent accused. When the reference is made to the F I R at Exhibit-6, the very same position emerges. In the F I R the complainant has not given the name of the respondent accused, who was the resident of his own village and was known to him since last so many years. Jitubhai, PW-2, Exhibit-7 has said that, their vehicle was on the correct side of the road and was later on taken on the kachha shoulder of the road, but the Bullet coming from the opposite direction had dashed with their vehicle. It requires to be appreciated that, Jitubhai also had not disclosed the identity of the respondent accused before the police when his statement came to be recorded. It is not disputed that the respondent accused was known to Jitubhai also since last so many years. Despite this, the fact remains that, Jitubhai had not disclosed the name of the respondent accused as the driver of the Bullet vehicle.

The prosecution wanted to place reliance upon the evidence of one Vajsur, PW-5, Exhibit-11. This witness claims to be an eye witness to the incident, but his evidence has been rightly discarded by the Court below because though the case of the complainant and his relation witness Jitubhai is that, their vehicle was on the correct side of the road and that the oncoming vehicle had given a dash to the vehicle on the right hand side, witness Vajsur has said that the dash was given to the vehicle of the complainant on its left hand side. The say of Vajsur at Exhibit-11 appears to be unbelievable, because if Rajdoot motor cycle were to be on the correct side of the road, namely the left hand side of the road, then, the vehicle coming from the opposite direction and entering in the incorrect side of the road could never have been given a dash to the Rajdoot motor cycle on its left side. More over, the panchanama regarding the damage done to Rajdoot motor cycle also goes to show very clearly that, the damage was located on its left side. From the evidence of Vajsur, it appears to be totally and absolutely unbelievable.

Not only that, the prosecution had failed to establish the identity of the respondent accused as the driver of the vehicle, but the prosecution had also failed to establish with the assistance of reliable evidence that the respondent accused was driving his vehicle in a manner so rash or negligent so as to endanger the human life. There is absolutely no evidence regarding the way and the manner in which the above said vehicle coming from the opposite direction was being driven. The panchanama of the scene of occurrence has not been proved with the assistance of the oral testimony of the panch witnesses. But even if the said panchanama is taken into consideration as a duly proved and accepted piece of evidence, then also, there is nothing recorded therein, with the assistance of which it could be concluded that the Bullet motor cycle was being driven in a rash and negligent manner so as to endanger human life.

Thus, it appears that the prosecution had firstly failed to establish that the respondent accused was driving the Bullet motor cycle at the relevant time, and had also secondly failed to establish that, the said vehicle was being driven in a rash and negligent manner so as to endanger human life. Thus the Court below has come to the conclusion, in my opinion, quite correctly that nothing against the respondent accused could be proved. The conclusion therefore would be that, the Ld. trial Magistrate was justified in ordering the acquittal of the respondent accused. The present Appeal therefore

requires to be dismissed. I order accordingly. The orders of acquittal pronounced by the Court below are hereby upheld and confirmed.

/vgn.